

1 defend, Your Honor, I just throw that out. It does get  
2 into the coverage issue as well. Because at some point,  
3 you, Your Honor, can make a determination that the  
4 uncontroverted evidence establishes as a fact that there  
5 is no coverage as of X date. That means that the duty  
6 to defend has terminated.

7 THE COURT: But where would it be, by your  
8 view, in this case in BROS -- when the other PRPs  
9 abandon the threat to sue BROS? Isn't that really when  
10 it is? And that's when all of the defense money has  
11 been expended. So, yes, there is a point. And, of  
12 course, there's a mechanism for you, which is to defend  
13 on a reservation.

14 MR. LEPORE: Yes, or file a DJ, which is what  
15 we did. And we filed it before that was resolved.

16 So, all I'm saying, Your Honor, is that at  
17 some point in time, there was a fact that was  
18 determinative that there was no coverage. And at the  
19 latest, it's uncontroverted. At the latest, it's when  
20 Black & Decker says that there was nothing before 1973.  
21 Now, our argument is it goes way back. But at some  
22 point, it does terminate. I'm not going to get into the  
23 argument anymore. I think Your Honor understands that.  
24 I just wanted to point out that the duty to defend is  
25 not forever.

1 THE COURT: Right.

2 MR. LEPORE: That's what that Maryland case  
3 stands for.

4 THE COURT: Right. But it may be coterminus  
5 with the expenditure of monies to defend by the private  
6 party. Since presumably, once it's clear, they don't  
7 have to spend any money. Nobody likes to spend money,  
8 by and large, gratuitously.

9 MR. LEPORE: Acknowledged, Your Honor. Thank  
10 you.

11 THE COURT: All right. We'll be in recess.  
12 And I'll see you on the 17th.

13 MR. LEPORE: Thank you, Your Honor.

14 THE COURT: Thanks.

15 RECESSED AT 11:30 A.M.

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## C E R T I F I C A T E

I, PAMELA R. OWENS, Official Court Reporter,  
U. S. District Court, do hereby certify that the  
foregoing is a true and correct transcription of the  
proceedings taken down by me in machine shorthand and  
transcribed by same. I certify that the transcript fees  
charged and the page format used by me comply with the  
requirement of this Court's court reporter plan and the  
requirements of the Judicial Conference of the United  
States.

Pamela R. Owens 10/16/03